California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2003-0023

FOR

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

CARL BOYETT
CAROL BOYETT
BOYETT PETROLEUM

171 Santa Rosa Avenue
Santa Rosa, California

Sonoma County

For

Failure to Comply with Time Schedule Order No. 98-114

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) gives notice that:

1. This Complaint is issued to Carl Boyett, Carol Boyett, and Boyett Petroleum (hereinafter collectively referred to as Dischargers) based on violations of Time Schedule Order No. 98-114 (Attachment A) and on provisions of the California Water Code Section 13308, which authorizes the imposition of Administrative Civil Liability for violations of a Time Schedule Order (TSO).

2. Carl and Carol Boyett own property at 171 Santa Rosa Avenue (hereinafter Site). The Site was the location of a retail gasoline station beginning in 1954, and was operated by Boyett Petroleum from 1976 to 1987.

3. On January 22, 1985, Cleanup and Abatement Order No. 85-86 was issued to the Dischargers following the discovery of gasoline discharging into Santa Rosa Creek from cracks in the concrete lined channel immediately north of the Site. On October 7, 1997, Cleanup and Abatement Order No. 97-120 was issued following delays and failure by the Dischargers to submit an acceptable excavation plan. On July 6, 1998, Cleanup and Abatement Order No. 98-75 was issued requiring the submittal of a revised corrective action plan, implementation of the corrective action plan once concurrence was issued by the Executive Officer, and submittal of a report of completed work. A revised corrective action plan was required because the existing corrective action plan did not address the offsite migration of product and the threat to Santa Rosa Creek.

4. The components of an acceptable corrective action plan (CAP) are identified in Title 23, Division 3, Chapter 16, Article 11, Section 2725 (c) – (g) and include an assessment of the impacts, a feasibility study and applicable cleanup levels. Implementation of the corrective action plan must adequately protect human health, safety and the environment, and restore or protect current or potential beneficial uses of water including ground and surface water.

5. On October 22, 1998, an evidentiary hearing was held before the Regional Water Board to consider the following:

- Issuance of an administrative civil liability complaint for non-compliance with Cleanup and Abatement Order No. 98-75,
- Adoption of a Time Schedule Order with predetermined administrative civil liabilities for potential future violations, and
- Referral to the State Attorney General for injunctive relief and/or other appropriate enforcement actions.

Prior to the hearing, the Dischargers offered to not contest the issuance of a TSO provided the Order would include a compliance schedule proposed by the Dischargers and that the administrative civil liabilities and other enforcement actions would not be pursued at that time. Regional Water Board staff concurred with the compliance schedule and revised the proposed TSO. At the October 22, 1998 hearing, the Regional Water Board adopted TSO No. 98-114.

6. Between October 1998 and the summer of 2001, Regional Water Board staff continued to work with the Dischargers towards compliance. The Dischargers completed Tasks A and B, by removing impacted on site soil and injecting an oxygenating agent into groundwater to enhance bioremediation. Task C, which ordered the re-evaluation and necessity to revise the CAP, was ongoing based on groundwater analytical results of quarterly sampling. High concentrations of petroleum hydrocarbons continued to be detected in groundwater beneath the site and adjacent properties and that information was the necessary evidence under Task C. to compel the Dischargers to submit a revised CAP. Ultimately, in August 2001, a revised compliance schedule was established.

7. On August 3, 2001, the Regional Water Board Executive Officer notified the Dischargers of the status of TSO No. 98-114, the revised compliance dates for Tasks H, I, and K, and required that the revised CAP address on and off site impacts. The compliance dates for Tasks H, I and K were revised as follows:

Task	Due Date	Penalty Assessment Date	Civil Penalty
H. Submit an acceptable CAP for on and offsite.	October 15, 2001	October 16, 2001	$10,000
I. Implement the CAP.	November 15, 2001	November 16, 2001	$10,000
K. Submit a report of Completed work	January 15, 2002	January 16, 2002 for Task I.	$ 5,000

In addition, Time Schedule Order No. 98-114 specifies: "If there are violations beyond the dates specified above, the Discharger is liable for $1,000 for each additional day in which the violation occurs. In no case will the Discharger be liable for more than $10,000 for any single day."

8. On October 15, 2001, a document entitled "Revised Offsite Corrective Action Plan" and dated October 12, 2001, was submitted. On January 8, 2002, Regional Water Board staff verbally informed the Dischargers legal counsel that this Corrective Action Plan (CAP) was not acceptable. On February 26, 2002, Regional Water Board staff provided the Dischargers with written comments that pointed out the inadequacies in the CAP; the feasibility study was incomplete because it did not:

- Identify the total number of ORC® slurry injections needed to restore or protect ground and surface water quality.
- Provide an estimate regarding the timeframe to project completion. Since this was not provided, the recommended remedy could not be evaluated with regards to the timely protection of ground and surface water.
- Provide the costs of the recommended remedy for the life of the project.
- The total costs of at least two technically feasible final corrective action alternatives were not compared.
- The feasibility study, therefore, did not demonstrate the technical feasibility and cost effectiveness of the recommended remedy.

The February 26, 2002, letter provided the Dischargers with an additional 30 days to submit an acceptable plan. An acceptable CAP was therefore due no later than March 28, 2002.

9. On March 27, 2002, a document entitled "Revised Corrective Action Plan" and dated March 25, 2002, was submitted. The proposed scope of work was the same as had been proposed in the October 12, 2001, CAP. Regional Water Board staff verbally notified the Dischargers' legal counsel that the CAP was not acceptable because it did not rectify the shortcomings of the October 12, 2001, CAP. The Dischargers' legal counsel indicated that the Regional Water Board was supposed to have received the "ultimate cleanup plan" and he would submit a copy.

10. On July 1, 2002, a document entitled "Ultimate Remedial Alternatives" and dated April 3, 2002, was submitted. The plan described in that document did not adequately address problems previously pointed out to the Dischargers. In particular, the plan did not include an acceptable method to address the offsite impacts of ongoing discharges and was not prepared according to the requirements of the California Code of Regulations (Title 23, Division 3, Chapter 16, Article 11). Cleanup alternatives were only considered that could reach water quality objectives within one year with a minimum of ongoing operation and maintenance with the understanding that the ultimate plan would form the basis for discussions with the City of Santa Rosa regarding property acquisition. The plan dismissed the use of ORC® slurry injections (which were the recommended remedy in the Revised CAP) because multiple injections would be necessary and the cleanup would not be timely. The recommended remedy is the injection of hydrogen peroxide, which was not selected in the October 12, 2001 and March 25, 2002 CAPs. Accordingly, the Regional Water Board staff concluded that the Ultimate Remedial Alternatives document did not constitute an adequate CAP.

11. The presence of impacted soil and groundwater adjacent to Santa Rosa Creek and the lack of effective and timely remediation is impacting the City of Santa Rosa Prince Memorial Greenway Project (PMGP). The PMGP is a creek restoration and linear park project that includes enhancing creek access, providing recreational opportunities, conserving and restoring natural habitats, enhancing aesthetic values, providing educational opportunities, maintaining hydraulic capacity, and establishing alternative transportation modes including pedestrian and bicycle pathways. The PMGP generally includes the removal of the concrete creek floor and walls and restoration of natural plant and animal habitats. The Regional Water Board issued the City of Santa Rosa Waste Discharge Requirements (WDRs) No. R1-2000-05 for the construction of the PMGP.

12. On September 30, 2002, Regional Water Board staff and City of Santa Rosa representatives observed obvious signs of discharges from the Site, including gasoline odors, stained soil, and a petroleum sheen on water immediately under the concrete lining of the floor of Santa Rosa Creek at several locations adjacent to and downstream of the Site. The City gathered water samples at these locations to evaluate PMGP design, scheduling, and cost considerations, including the potential for violations of WDRs No. R1-2000-05 to occur due to the presence of the contamination. The analytical results of those water samples confirmed an ongoing discharge of gasoline and gasoline constituents from the Site to Santa Rosa Creek. Therefore, the removal of the concrete south wall and floor by the City of Santa Rosa and/or their contractors would result in a violation of R1-2000-05.

13. On October 16, 2002, Regional Water Board staff met with Carl Boyett and informed him of the ongoing discharge to Santa Rosa Creek. Staff also informed him that the Dischargers had failed to timely submit an acceptable Corrective Action Plan, which is a violation of Task H of Time Schedule Order No. 98-114. Finally, Staff stated that the ongoing discharge and lack of corrective action is causing adverse impacts on Santa Rosa Creek and is affecting the design, construction, schedule, and costs of the PMGP.

14. On November 21, 2002, Regional Water Board staff again met with Carl Boyett and reiterated that a revised CAP is overdue. Staff again stated that the revised CAP must include a method to abate the discharge to Santa Rosa Creek, address remaining sources of contamination, and remediate the on- and off-site dissolved contaminant plume.

15. On December 4, 2002, a document entitled "Remedial Opportunities During Construction of the Prince Memorial Greenway Project" was submitted, presumably to cure defects in the prior proposed CAPs. The proposal includes a scope of work to conduct additional subsurface investigative work along Santa Rosa Creek to evaluate the installation of a sheet piling wall and groundwater extraction system to abate the ongoing discharge to Santa Rosa Creek. The proposal also includes the removal of impacted soil during the construction of the PMGP. However, this document does not address the problems with the prior CAPs called to the Dischargers' attention by Regional Water Board staff and does not satisfy the TSO No. 98-114 requirement for the submittal of an acceptable CAP. Specifically, it does not include an assessment of the impacts, a feasibility study to evaluate alternatives for remedying or mitigating the actual or potential adverse effects of the unauthorized release nor evaluate their cost effectiveness.

16. Under Section 13308(b) of the California Water Code, a time schedule order must specify a time schedule and a civil penalty, which shall become due if compliance is not achieved in accordance with the time schedule. The penalty shall be based upon the amount reasonably necessary to achieve compliance, not to include any amount intended to punish or redress previous violations, and not to exceed ten thousand dollars ($10,000) for each day in which the violation occurs. The civil penalties prescribed by Order No. 98-114 were reasonable and necessary to achieve compliance with that Order.

17. If compliance is not achieved in accordance with the time schedule, Section 13308(b) provides that the Regional Water Board may impose the penalty specified in the order or choose to impose some lesser amount. If it chooses to reduce the penalty, the Regional Water Board must make express findings setting forth the supporting reasons based on the specific factors required to be considered pursuant to California Water Code Section 13327.

18. The issuance of a Complaint for Administrative Civil Liability does not have the potential to result in a physical change in the environment and is therefore not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). It is also exempt from CEQA in accordance with Title 14, California Code of Regulations, Section 15321(a)(2).

19. The Dischargers failed to submit an acceptable CAP for remediation of on- and off-site contamination by October 15, 2001, as required by TSO No. 98-114, Task H. The civil liability specified for non-compliance with Task H is $10,000.00. The Dischargers also failed to implement an acceptable CAP by November 15, 2001, as required by TSO No. 98-114, Task I. The civil liability specified for non-compliance with Task I is $10,000.00. The Dischargers failed to submit a report of completed work by January 15, 2002, as required by TSO No. 98-114, Task K. The civil liability specified for non-compliance with Task K is $5,000.00. In addition, there has been a total of 467 days of non-compliance with Task H from October 17, 2001 to January 27, 2003; 376 days of non-compliance with Task I from November 17, 2001 to January 27, 2002; and 376 days of non-compliance for Task K from January 17, 2002, to January 27, 2003. The total days of violation past the penalty assessment dates are 1,280 days; at $1,000.00 per day of violation that equals $1,280,000.00. Therefore, the total maximum civil penalty is $1,305,000.00.

20. In determining whether to reduce the amount of the civil liability, pursuant to California Water Code Section 13327, the Regional Water Board took into account the nature, circumstance, extent and gravity of the violation; whether the discharge is susceptible to cleanup and abatement; the degree of toxicity of the discharge; and with respect to the violators, the ability to pay; the ability to continue business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings resulting from the violation; and other matters as justice may require.

    A. Nature, Circumstance, Extent, and Gravity of the Violations

    Gasoline was discovered seeping into Santa Rosa Creek in 1985. Site investigative work revealed the presence of product on groundwater at the site at up 5.83 feet in thickness. On site remediation work has been completed including the removal of impacted soil, product and groundwater. However, a significant dissolved phase plume remains on site, off site migration has occurred beneath the adjacent property and evidence has been obtained that reveals an ongoing discharge into Santa Rosa Creek. Failure to submit and implement an acceptable Corrective Action Plan for on and off site contamination allows the continuing discharge of petroleum hydrocarbons into Santa Rosa Creek and adversely impacts the City of Santa Rosa PMGP.

    Consideration of the nature, circumstance, extent, and gravity of the violations does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

    B. Susceptibility to Cleanup or Abatement

    Site conditions are susceptible to cleanup and abatement through the preparation and implementation of an acceptable Corrective Action Plan that abates the discharge to Santa Rosa Creek, removes and/or treats any remaining sources of contamination and addresses the dissolved gasoline plume in groundwater. Technically feasible cleanup alternatives exist that may be implemented with success in a timely manner.

Consideration of susceptibility to cleanup or abatement does not provide a reason for reduction from the maximum amount of Civil Liability to be imposed.

C. Degree of Toxicity

Site contaminants include gasoline and diesel, which are each composed of numerous individual compounds. A major component of gasoline is benzene, which is a human carcinogen with a Department of Health Services Maximum Contaminant Level of 1.0 part per billion. The toxicity of the individual and cumulative fuel components to biological and aquatic life in Santa Rosa Creek is not completely known.

Consideration of the degree of toxicity does not provide reason for reducing the amount of Civil Liability to be imposed.

D. Ability to Pay

An assets search has not been conducted. Therefore, Regional Water Board staff has no knowledge concerning the Discharger's ability to pay the maximum civil penalty.

However, consideration of the Discharger's ability to pay may provide reason for reducing the amount of Civil Liability.

E. Effect on Ability to Continue Business

An assets search has not been conducted. Therefore, Regional Water Board staff has no knowledge concerning the Discharger's ability to continue in business.

Consideration of effect on ability to continue business may provide reason for reducing the amount of Civil Liability.

F. Voluntary Cleanup Efforts

Voluntary cleanup actions included the immediate installation of groundwater monitoring wells in response to the discovery of gasoline migrating into Santa Rosa Creek in 1985. Efforts to remediate the release have been conducted, but have been ineffective towards complete remediation and water quality protection.

Consideration of voluntary cleanup efforts may provide reason for reducing the amount of Civil Liability.

G. Prior History of Violations

On October 12, 1998, an evidentiary hearing was held before the North Coast Regional Water Quality Control Board to consider the issuance of Administrative Civil Liabilities due to non-compliance with Cleanup and Abatement Order No. 98-75. At that time, the Dischargers failed to submit an acceptable Corrective Action Plan and effective remediation. The Dischargers also failed to:

- Provide adequate documentation concerning site remediation activities, including separate phase product removal and soil vapor extraction system installation, operation and effectiveness,
- Provide a response to Regional Water Board staff inquires made in September and October 1996 concerning the submittal of a work plan, and
- Provide an acceptable site remediation plan in response to staff requests.

Due to the history of delays and non-compliance, the evidentiary hearing was also held to consider the establishment of a Time Schedule Order with predetermined Administrative Civil Liabilities for potential future violations, referral to the State Attorney General for injunctive relief and/or other appropriate enforcement actions. At that time, the Dischargers proposed to not contest the adoption of a time schedule order with the condition that the order contain a schedule proposed by the Dischargers. The schedule was acceptable and the North Coast Regional Water Quality Control Board directed the issuance of Time Schedule Order No. 98-114.

Consideration of past violations does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

H. Degree of Culpability

Carl and Carol Boyett are culpable as owners of 171 Santa Rosa Avenue and Boyett Petroleum is culpable as the operator at the site at the time of the discharge.

Consideration of culpability does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

I. Economic Savings

Delay in implementing an appropriate corrective action delays expenditures and could result in an economic savings.

Consideration of economic savings does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

J. Other Matters as Justice May Require

Significant Regional Water Board staff hours have been dedicated to this site in an effort to gain compliance including the preparation of enforcement Orders to protect ground and surface water quality.

Funding for cleanup activities is available to complete the work including insurance coverage and a current eligible claim to the State Water Resources Control Board, Petroleum Underground Storage Tank Cleanup Fund. However, compliance with the California Underground Storage Tank Regulations (Title 23, Division 3, Chapter 16, Article 11) is an eligibility requirement and non-compliance jeopardizes funding from the State of California.

Consideration of other matters as justice may require does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

21. A hearing to affirm, reject, or modify this Complaint may be held before the Regional Water Board unless Boyett Petroleum, Carl Boyett and Carol Boyett waive their right to a hearing and pay the imposed civil liability.

22. Payment of the Civil Liability does not satisfy the Discharger's obligation to comply with the tasks required by Time Schedule Order No. 98-114. That Order remains in full force and effect.

Proposed Civil Liability

Based on the above factors, I hereby propose that the Dischargers collectively pay the Administrative Civil Liability in the amount of $1,305,000.00. This is based on an initial penalty of $10,000.00 for violation of Task H, an initial penalty of $10,000.00 for violation of Task I, an initial penalty of $5,000.00 for violation of Task K, and 1,280 days of violation at $1,000.00 for each day of violation up to January 27, 2003.

I also hereby propose that the Dischargers collectively pay $100,000.00 of the total Administrative Civil Liability now and the remaining $1,205,000.00 of the Administrative Civil Liability shall be permanently suspended contingent upon compliance with Time Schedule Order No. 98-114, Tasks H, I and K to the satisfaction of the Executive Officer as follows:

- Four hundred and one thousand, six hundred sixty-six dollars and sixty-six cents ($401,666.66) shall be permanently suspended upon submittal of an acceptable Corrective Action Plan by March 1, 2003. An acceptable CAP must contain a proposal to: 1) abate the ongoing discharge to Santa Rosa Creek, 2) remove and/or treat any remaining sources of contamination including but not limited to impacted soil, separate phase hydrocarbons and/or impacted groundwater behind the concrete lined creek wall and floor, and 3) restore the beneficial uses of groundwater and remediate the dissolved gasoline plume on and off site.

- One hundred thirty-three thousand, eight hundred eighty-eight dollars and eighty-eight cents ($133,888.88) shall be permanently suspended upon adequate CAP implementation to abate the discharge to Santa Rosa Creek. The work necessary to abate the discharge to Santa Rosa Creek must be completed by October 15, 2003. Completion of the work must be documented in an adequate report of findings due by December 1, 2003.

- One hundred thirty-three thousand, eight hundred eighty-eight dollars and eighty-eight cents ($133,888.88) shall be permanently suspended upon adequate CAP implementation to remove and/or effectively treat any remaining on and off site sources. The work necessary to remove and/or effectively treat any remaining on an off site sources must be completed by October 15, 2003. Completion of the work must be documented in an adequate report of findings due by December 1, 2003.

- Four hundred one thousand, six hundred sixty-six dollars and sixty-six cents ($401,666.66) shall be permanently suspended upon adequate CAP implementation to restore the beneficial uses of groundwater and remediate the on and off site dissolved phase gasoline plume.

- One hundred thirty-three thousand, eight hundred eighty-eight dollars and eighty-eight cents ($133,888.88) shall be permanently suspended upon submittal of an adequate

report of work completed under the CAP to restore the beneficial uses of groundwater and remediate the on and off site dissolved phase gasoline plume. This report shall be submitted within 45 days of project completion.

If at any time, the Executive Officer determines that the Dischargers, or any successor of the Dischargers, are in violation, the full and outstanding portion of the suspended Administrative Civil Liability shall be immediately due and payable.

Waiver of Hearing

Boyett Petroleum, Carl Boyett and Carol Boyett may waive their right to a hearing. If these parties wish to waive the hearing, they or their duly authorized representatives should sign the enclosed waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board," for the amount of civil liability proposed above by March 3, 2003 to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403.

Ordered by _____

Susan Warner
Executive Officer
January 31, 2003

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